

Kenneth S. Montoya
kenny@montoyahisellaw.com
Law Offices of Montoya, Hisel and Associates
901 Capitol St. NE
Salem, OR 97301
Telephone: (503) 480-7252
Fax: (503) 779-2716
Attorney for Defendants Polk County and,
Deputy Michael H. Smith

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

KEVIN BRATCHER,

Case No. 3:20-cv-02056-SB

Plaintiff,

v.

POLK COUNTY; CITY OF SALEM;
DEPUTY MICHAEL H. SMITH, in his
individual capacity; and DOES 1-4, in their
individual capacity,

**SUPPLEMENTAL DECLARATION OF
DEPUTY MICHAEL H. SMITH IN
SUPPORT OF REPLY IN FURTHER
SUPPORT OF COUNTY DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendants.

I, Michael H. Smith, hereby declare under penalty of perjury that the following is true
and correct:

1. I am currently a Deputy at the Polk County Sheriff's Office. I have worked as a sworn Deputy Sheriff with Polk County since September 18, 2014. This Declaration is offered for the purposes of presenting testimony in support of the material facts relevant to and in support of County Defendants' Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment. I would testify to the truth of these matters at any proceeding in this case.

2. On September 6, 2019, I personally witnessed plaintiff throw papers from his driveway onto the street. After plaintiff was secured in my patrol vehicle, I used my phone to photograph the papers where they landed in the street. The three photographs were taken between 11:22 a.m. and 11:23 a.m., as shown in the file name and confirmed by the internal properties and details unique to each photograph. The photographs accurately depict the location where I saw the papers land after plaintiff threw them. The papers were not moved or altered at any time before I took the photographs. I subsequently removed the papers from the street and entered them into evidence with the photographs and an audio recording of the incident.

3. Attached to this declaration and marked “Exhibit 2” is a true and accurate photograph I personally took on September 6, 2019, showing the exact location where the papers plaintiff threw landed in the street.

4. Attached to this declaration and marked “Exhibit 3” are true and accurate pages from the Incident Report I drafted on September 6, 2019, showing I entered the photographs referenced in paragraph 2 into evidence.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 12th day of April, 2022.

s/Michael H. Smith
Deputy Michael H. Smith

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing SUPPLEMENTAL DECLARATION OF DEPUTY MICHAEL H. SMITH IN SUPPORT OF REPLY IN FURTHER SUPPORT OF COUNTY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT on:

Kevin T. Lafky
Tonyia J. Brady
Lafky & Lafky
429 Court Street NE
Salem, OR 97301
Attorneys for Plaintiff

Jennifer M. Gaddis
City of Salem Legal Department
555 Liberty St. SE, Room 225
Salem, OR 97301
Attorney for City of Salem

by the following indicated method or methods:

- ☒ by **electronic means through the Court's Case Management/Electronic Case File system** on the date set forth below;
- by **emailing** a copy thereof to each attorney at each attorney's last-known email address on the date set forth below;
- by **mailing** a full, true, and correct copy thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney's last-known address listed above and depositing it in the U.S. mail at Salem, Oregon on the date set forth below.

DATED this 19th day of April, 2022.

s/Kenneth S. Montoya
Kenneth S. Montoya, OSB #064467
Attorney for Defendant Polk County

CERTIFICATE OF SERVICE